Supreme Court, U.S.
FILED

94 495 SEP 13 1994

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1994

ROGER F. QUISENBERRY,

Petitioner,

v.

JACK M. BERK, Trustee, and
MILTON T. BAUER, CLERK OF
THE CIRCUIT COURT OF PALM BEACH
COUNTY, FLORIDA,

Respondents.

On Petition For Writ Of Certiorari To The Fourth District Court Of Appeal Of Florida

PETITION FOR WRIT OF CERTIORARI

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40 pp

QUESTION PRESENTED

Whether Due Process requires that a legal titleholder receive actual notice of an application for a tax deed by certified mail or personal service before his or her property is auctioned for unpaid taxes?

PARTIES TO THE PROCEEDING

The parties to the proceedings below were Petitioner, Roger F. Quisenberry, and Respondents, Jack M. Berk, Trustee, and Milton T. Bauer, Clerk of the Circuit Court of Palm Beach County, Florida. The same parties are before this Court.

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OPINIONS BELOW

The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida granted summary judgment in favor of Defendants/Respondents in an unpublished Order, which is reprinted in the Appendix hereto ("App.") at 3. The Fourth District Court of Appeal for the State of Florida affirmed the Circuit Court in an unreported Final Judgment, App. at 1.

Mr. Quisenberry timely filed this Petition for Writ of Certiorari.

JURISDICTION

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT: (DUE PROCESS) § 1:

> No state shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny

to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

This case implicates Fla. Stat. § 197.522, App. at 8, Fla. Stat. § 48.031(1)(a), App. at 11, and Fla. Admin. Code Rule 12D-13.062, App. at 12.

STATEMENT OF THE CASE

This case presents the question of whether Due Process requires that a property owner receive actual notice of an application for a tax deed by certified mail or personal service before property is auctioned for unpaid taxes.

Petitioner Roger F. Quisenberry owned numerous parcels of property in Palm Beach County, Florida. On one parcel, located on Western Way in Lantana, Florida ("Western Way"), he owed Two Hundred and Seventy-seven dollars and 54/100 ($277.54) in taxes for the 1984 tax year. App. at 16. As a result of Mr. Quisenberry's failure to pay those taxes, the local clerk's office ("Clerk") issued a Tax Sale Certificate against Western Way to the "1982 Trust for Jessica Lynn Israel." The 1982 Trust for Jessica Lynn Israel then applied for a tax deed to Western Way.

Pursuant to Fla. Stat. § 197.522(1), the Clerk attempted to send notice of the tax sale of the Western Way parcel to Mr. Quisenberry by certified mail. App. at

5. However, as is reflected in App. at 7, Mr. Quisenberry never received this notice. Also pursuant to Fla. Stat. § 197.522(2), the Clerk attempted to serve notice of the tax sale of the Western Way parcel to Mr. Quisenberry by personal service of process. App. at 18. However, as is reflected in App. at 20, Mr. Quisenberry never received this notice either.

SUMMARY OF THE ARGUMENT

Due Process requires that in any proceeding which is to be accorded finality, a party in interest must be provided notice reasonably calculated, under all the circumstances, to apprise interested parties of the action and afford them the opportunity to be heard. Fla. Stat. § 197.522, and recent Florida case law interpreting this statute, fail to satisfy this constitutional requirement in that notice of an application for a tax deed need only be *sent* to the property owner in an attempt to apprise him or her of such an application, and only if the address of that property owner is known at the time the application is made. There is no requirement that the notice be received by the property owner, nor are the requirements of Fla. Stat. § 197.522 otherwise reasonably calculated to apprise property owners of such an application.

ARGUMENT

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), this Court held that in all actions, whether *in rem* or *in personam*, notice must be reasonably

calculated to reach those parties whose names and addresses are known and that constructive notice by publication is not sufficient.

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.

Id. at 314; *Milliken v. Meyer*, 311 U.S. 457 (1940); *Grannis v. Ordean*, 234 U.S. 385 (1914).

In *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972), this Court further expanded on the principle set forth in *Mullane*.

> The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment – to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party.

In this case Mr. Quisenberry did not receive notice that the Western Way parcel was being sold for $277.54 in delinquent taxes. Notice of the application of the tax deed was sent to Mr. Quisenberry by certified mail, but was not received by him. Nor was Mr. Quisenberry personally served with such notice. Certainly, as the legal titleholder

of the Western Way parcel, he lost a substantial property interest in it when it was auctioned.

Fla. Stat. § 197.522(1) provides that property owners such as Mr. Quisenberry are deemed to have received actual notice of the application for a tax deed on their properties if notice of such an application is merely sent to him by certified mail, and only if the property owner's address is known by the clerk at the time the application is made.[1] Although Fla. Stat. § 197.522 attempts to provide an additional safeguard to protect the interests of property owners by requiring that notice of the application of a tax deed be personally served on a property owner, the statute itself, as well as recent case law interpreting same, negate this safeguard.

Fla. Stat. § 197.522(2) provides, in part, that:

> [i]n addition to the notice provided in subsection (1), the sheriff of the county in which the legal titleholder resides shall, at least 20 days prior to the date of the sale, notify the legal titleholder of record of the property on which the tax certificate is outstanding. . . . Such notice *shall* be served as specified in chapter 48; if the sheriff is unable to make service, he shall post a

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[1] Fla. Stat. § 197.522(1)(e) also provides that notice through publication is deemed sufficient for actual notice as well. Although publication of the sale of the Western Way parcel was apparently made, this Court has repeatedly held that "[t]he general rule which emerged from the *Mullane* case is that publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question." *Schroeder v. City of New York*, 371 U.S. 208, 212-13 (1962).

copy of the notice in a conspicuous place at the legal titleholder's last known address.

However, this same provision also provides that "[t]he inability of the sheriff to serve notice shall not affect the validity of the tax deed issued pursuant to the notice." The Florida Supreme Court recently held in *Dawson v. Saada*, 608 So.2d 806 (Fla. 1992) that any problem with the sheriff's service on a property owner of such notice has no legal effect on the validity of tax deed issued on the property. Accordingly, the only notice required by Florida law of an application for a tax deed is that notice of the application be sent to the property owner's address by certified mail, and only if the address is known at the time the application is made. In fact, the statute makes clear that non-receipt of this notice will not affect the validity of the tax deed. Subsection (d) of Fla. Stat. § 197.522(1) provides that "[t]he failure of anyone to receive notice as provided herein shall not affect the validity of the tax deed issued pursuant to the notice."

In this case, the tax deed issued to 1982 Trust for Jessica Lynn Israel on the Western Way parcel was upheld based on the holding in *Dawson* that the inability of the sheriff to serve notice did not invalidate such a deed. In short, the validity of the tax deed issued was upheld despite a complete lack of actual notice provided to Mr. Quisenberry. After the issuance of the tax deed on Western Way, Florida law vested the 1982 Trust for Jessica Lynn Israel with a fee simple title to the Western Way parcel.

The issuance of the tax deed on the Western Way parcel resulted in a taking of Mr. Quisenberry's property

without adequate notice and without compensation. It is fundamentally unfair and a clear violation of Mr. Quisenberry's Due Process rights to be deprived of property in such a manner. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

I. IN BALANCING THE INTERESTS OF THE STATE WITH THAT OF PROPERTY OWNERS, THE PROCEDURAL SAFEGUARDS IMPLEMENTED BY FLORIDA DO NOT ADEQUATELY PROTECT THE INTERESTS OF PROPERTY OWNERS

In *Mathews v. Eldridge*, 424 U.S. 319 (1976), this Court formulated the test to be applied to determine whether certain procedures comport with due process.

> More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335. By applying the *Mathews* test to the issuance of the tax deed on the Western Way parcel, it is readily apparent that the notice provided to Mr. Quisenberry under Fla. Stat. § 197.522 did not comport with constitutional Due Process requirements, and as such this statute,

as applied to Mr. Quisenberry, did not adequately protect his property interests in the Western Way parcel, and therefore fails to satisfy Due Process.

A. THE PRIVATE INTEREST AFFECTED BY STATE ACTION

The private interest at stake in the issuance of a tax deed is the property interest of the record title holder. Mr. Quisenberry, the record titleholder of the Western Way parcel, assuredly was an interested party in the application for, and subsequent issuance of, the tax deed on the Western Way parcel, *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), and as such he must be provided adequate notice.

B. THE RISK OF AN ERRONEOUS DEPRIVATION OF A PROPERTY INTEREST THROUGH THE SAFEGUARDS IMPLEMENTED BY FLORIDA CREATES A SUBSTANTIAL RISK TO PROPERTY OWNERS

Florida's procedures for providing notice to property owners of an application for a tax deed on their property create a substantial risk to property owners. While Florida requires that notice of the application be sent by certified mail, there is no requirement that it be received. Fla. Stat. § 197.522(1)(d). Nor, for that matter, is there a requirement that notice be sent by certified mail. "If no address is listed in the tax collector's statement, then no notice shall be required." Fla. Stat. § 197.522(1)(b). Moreover, it is abundantly clear that Florida law does not require personal service of such notice. *Dawson*, at 808

n.1. Nor does Florida law require that if personal service cannot be effectuated, notice be posted in a conspicuous place at the property owner's residence. *Compare* Fla. Admin. Code R. 12D-13.062(2)(b);[2] *with Dawson*, at 808 n.1.

The additional or substitute procedural safeguard of sending notice of a tax sale to a property owner at his residence by certified mail, and requiring receipt of same, is a minimal burden to the State, but will provide significant protection to the property owner. Similarly, requiring that personal service be properly effectuated, or that such notice be posted at his residence in a manner which would reasonably provide notice of the application, would also be a minimal burden on the State and would provide adequate protection to the property owner. If one of these additional procedural safeguards were employed, both the interests of the property owner and the State would be better served. The State would receive its unpaid taxes and the property owner would be able to protect his or her property interest.

In this case, Mr. Quisenberry did not receive notice of the application for a tax deed on the Western Way parcel by certified mail, nor was he personally served with such

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[2] Much of the argument in the state courts below discussed due process requirements of notice embodied in Section 197.522, Florida Statutes. Mr. Quisenberry acknowledges that the failure to follow state procedural requirements does not, *ipso facto*, establish a violation of federal due process. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). He contends, however, that the failure to serve him personally or post notice of the application at his residence violates federal constitutional Due Process.

notice. It would have been a simple matter to insure that before the issuance of the tax deed that Mr. Quisenberry had received notice of the application either by certified mail or personal service.

C. THE STATE'S INTERESTS

Florida has an important interest at stake in collecting property taxes. As in most other states, property taxes are a primary source of revenue necessary to fund both State and local governmental services. However, a State's power to collect taxes is not unbridled.

In *Marchetti v. United States*, 390 U.S. 39 (1968), this Court, while recognizing the power of government to tax, also acknowledged that the Constitution places limitations in connection with the exercise of this power. *Id.* at 58. Indeed, it was the concern for abuses of this very power which led to the adoption of the Due Process Clause contained in the Fifth and Fourteenth Amendments. *See Fuentes v. Shevin*, 407 U.S. 67 (1972); *Frank v. Maryland*, 359 U.S. 360, 378 (1959); *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977).

II. THE FLORIDA COURT ERRED IN NOT FOLLOWING *MULLANE* AND OTHER PRECEDENT OF THIS COURT

The Florida court failed to follow this Court's decision in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and its progeny, in invalidating a tax sale of a parcel of land despite the acknowledged problems with the sheriff's service which resulted in the property

owner failing to receive actual notice of the application of a tax deed. *Dawson v. Saada*, 608 So.2d 806 (Fla. 1992).

In *Mullane*, this Court invalidated a New York statute which authorized notice by publication to beneficiaries of a common trust informing them about an annual judicial settlement of the common trust account. Notice by publication was held to be inadequate because "under the circumstances it [was] not reasonably calculated to reach those who could easily be informed by other means at hand." *Id.* at 319. Following *Mullane*, constructive notice of condemnation proceedings has been recognized as inadequate to notify a landowner whose identity was known to the City, *Walker v. Hutchinson*, 352 U.S. 112 (1956); publication and posting were held insufficient to apprise property owners of condemnation proceedings when his name and address were readily ascertainable from public records, *Schroeder v. City of New York*, 371 U.S. 208 (1962); and posting of a summons on a apartment door was found inadequate to provide notice in forcible entry and detainer actions, *Greene v. Lindsey*, 456 U.S. 444 (1982).

The general rule set forth in *Mullane* was that:

> [e]xceptions in the name of necessity do not sweep away the rule that within the limits of practicability, notice must be such as is reasonably calculated to reach interested parties. Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.

Id. at 318.

In this case the Clerk was aware that Mr. Quisenberry had not received notice of the application for a tax deed on the Western Way parcel by certified mail. As such, holding that Mr. Quisenberry received notice of this application through publication, or a patently inadequate service by the sheriff, does not satisfy the minimal requirements of Due Process protected by the Fifth and Fourteenth Amendments. Rather, because the Clerk was aware that Mr. Quisenberry had not received notice of the application through the mail, the necessity of the personal service of this notice was even more important. To hold that any problem with the personal service of the notice has no legal effect on the validity of the tax deed would be to deny Mr. Quisenberry his right to Due Process required by the United States Constitution.

This Court has repeatedly reaffirmed this proposition. In *Mennonite*, this Court said "[n]otice by mail or *other means* as *certain* to *insure* actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interest of any party . . . ." (emphasis added)

Based on this Court's reasoning in the above cited case law, the decision of the Fourth District Court of Appeal of Florida to affirming the trial court's granting Respondents' Second Amended Motion for Summary Judgment should be reversed.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

ROGER F. QUISENBERRY,

Plaintiff,

vs.

JACK M. BERK, Trustee, and MILTON T. BAUER, CLERK OF THE CIRCUIT COURT OF PALM BEACH COUNTY,

Defendants.
_____/

Case No. CL 92-1674 AN

4DCA Case No. 93-01640

FINAL JUDGMENT

This action came before the Court upon the Second Amended Motion of the Defendant, Jack Berk, Trustee, for summary judgment.

It is hereby ordered and adjudged that all notices were proper except that the Sheriff, rather than post the notice in a conspicuous place, handed it to the sole person on the premises. Plaintiff was out of the State and so no one was available to be served.

It is further hereby ordered and adjudged that *Dawson v. Saada*, 608 So.2d 806 (1992) holds that any problems with the sheriff's service are of no legal effect.

THEREFORE, it is hereby ORDERED and ADJUDGED as follows:

A) The motion of the Defendant, Jack Berk, for final summary judgment is granted;

B) The Plaintiff, Roger Quisenberry, shall take nothing by this action; and

C) The Defendant, Jack Berk, shall go hence without day [sic].

DONE AND ORDERED in premises at West Palm Beach, Palm Beach County, Florida this 20 day of May, 1994.

/s/ Circuit Court Judge
CIRCUIT COURT JUDGE

Copies furnished:

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY.
CIVIL DIVISION

CASE NO. CL 92-1674-AN

ROGER F. QUISENBERRY,

Plaintiff,

vs.

JACK M. BERK, Trustee, and MILTON T. BAUER, CLERK OF THE CIRCUIT COURT OF PALM BEACH COUNTY,

Defendants.
_____/

ORDER GRANTING DEFENDANT BERK'S SECOND AMENDED MOTION FOR SUMMARY JUDGMENT

This action came before the Court upon the second amended motion of the Defendant, Jack M. Berk, Trustee, for summary judgment and the Court finds as follows:

All notices were proper except that the Sheriff, rather than post the notice in a conspicuous place, handed it to the sole person on the premises. Plaintiff was out of the State and so no one was available to be served.

Dawson v. Saada, 608 So.2d 806 (1992) holds that any problems with the sheriff's service are of no legal effect. Therefore Defendant's motion for summary judgment is granted.

ORDERED at West Palm Beach, Florida, this 26 day of April, 1993.

/s/ Edward Fine
Edward Fine, Circuit Judge

Copies furnished:
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120 S. Olive Ave., #555
West Palm Beach, FL 33401

[STAMP]

CERTIFIED

P 724 240 924

MAIL

JOHN B. DUNKLE

Clerk of Court

Tax Deed Dept.

PALM BEACH COUNTY

P.O. Box 484

West Palm Beach, FL 33402-0484

RETURNED

TO

SENDER

UNCLAIMED

RETURN RECEIPT REQUESTED

ALL RECORDS IN THIS OFFICE ARE MICROFILMED INSURE LEGIBILITY OF YOUR INSTRUMENT. USE GOOD BLACK TYPEWRITER RIBBON AND BLACK INK. WRITE CLEARLY AND FIRMLY.

Name _____

1st Notice 12/11

2nd Notice 12-16

Return 12-26

1611 (illegible) 0 (illegible)

ROGER F. QUISENBERRY

5421 S. FLAGLER DR

WEST PALM BEACH, FL 33405

Is your RETURN ADDRESS completed on the reverse side?

• **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. *The return receipt fee will provide you the name of the person delivered to and the date of delivery.* For additional fees the following services are available. Consult postmaster for fees and check box[es] for additional service[s] requested.

1. [ ] Show to whom delivered, date, and addressee's address. *(Extra charge)*

2. [ ] Restricted Delivery *(Extra charge)*

---

3. Article Addressed to:

16112'89 07

ROGER F. QUISENBERRY

5421 S FLAGLER DR

WEST PALM BEACH, FL 33405

---

4. Article Number

P 724 240 924

[ ] Registered	[ ] Insured
[✔] Certified	[ ] COD
[ ] Express Mail	[ ] Return Receipt for Merchandise

Always obtain signature (illegible)

or agent and *DATE DEL*

---

5. Signature – Addressee **UNCLAIMED**

X RETURNED TO SENDER

---

6. Signature – Agent

X

---

7. Date of Delivery

---

8. Addressee's Address *(ONLY if requested and fee paid).*

(ILLEGIBLE)

Thank you for using

Return Receipt Service.

Fla. Stat. 197.522 provides:

197.522. Notice to owner when application for tax deed is made. –

(1)(a) The clerk of the circuit court shall notify, by certified mail with return receipt requested or by registered mail if the notice is to be sent outside the continental United States, the persons listed in the tax collector's statement pursuant to s. 197.502(4) that an application for a tax deed has been made. Such notice shall be mailed at least 20 days prior to the date of sale. If no address is listed in the tax collector's statement, then no notice shall be required.

(b) The clerk shall enclose with every copy mailed a statement as follows:

WARNING: There are unpaid taxes on property which you own or in which you have a legal interest. The property will be sold at public auction on (date) unless the back taxes are paid. To make payment, or to receive further information, contact the clerk of court immediately at (address), (telephone number).

(c) The clerk shall complete and attach to the affidavit of the publisher a certificate containing the names and addresses of those persons notified and the date the notice was mailed. The certificate shall be signed by the clerk and his official seal affixed. The certificate shall be prima facie evidence of the fact that notice was mailed. If no address is listed on the tax collector's certification, the clerk shall execute a certificate to that effect.

(d) The failure of anyone to receive notice as provided herein shall not affect the validity of the tax deed issued pursuant to the notice.

(e) A printed copy of the notice as published in the newspaper, accompanied by the warning statement described in paragraph (b), shall be deemed sufficient notice.

(2) In addition to the notice provided in subsection (1), the sheriff of the county in which the legal titleholder resides shall, at least 20 days prior to the date of sale, notify the legal titleholder of record of the property on which the tax certificate is outstanding. The original notice and sufficient copies shall be prepared by the clerk and provided to the sheriff. Such notice shall be served as specified in chapter 48; if the sheriff is unable to make service, he shall post a copy of the notice in a conspicuous place at the legal titleholder's last known address. The inability of the sheriff to serve notice on the legal titleholder shall not affect the validity of the tax deed issued pursuant to the notice. A legal titleholder of record who resides outside the state may be notified by the clerk as provided in subsection (1). The notice shall be in substantially the following form:

WARNING

There are unpaid taxes on property which you own. The property will be sold at public auction on (date) unless the back taxes are paid. To make arrangements for payment, or to receive further information, contact the clerk of court immediately at (address), (telephone number).

In addition, if the legal titleholder does not reside in the county in which the property to be sold is located, a copy of such notice shall be posted in a conspicuous place on the property by the sheriff of the county in which the property is located. However, no posting of notice shall be required if the property to be sold is classified for assessment purposes, according to use classifications established by the department, as nonagricultural acreage or vacant land.

(3) Nothing in this chapter shall be construed to prevent the tax collector, or any other public official, in his discretion from giving additional notice in any form concerning tax certificates and tax sales beyond the minimum requirements of this chapter.

Fla. Stat.§ 48.031(1)(a) provides:

(1)(a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

Fla. Admin. Code Rule 12D-13.062 provides:

Rule 12D-13.062 Notices; Advertising, Mailing, Delivering and Posting of Notice of Tax Deed Sale.

(1) Advertising.

(a) Upon receipt from the tax collector of the tax collector's certification and the tax deed application the clerk shall publish a notice of the pending sale once each week for four (4) consecutive weeks at weekly intervals in a local newspaper. The form of the notice shall be as prescribed by the Department of Revenue. No tax deed shall be held until 30 days after the first publication of notice.

(b) The clerk shall obtain proof of publication and file the same in his office before holding a tax deed sale. Proof of publication may be a copy of the advertisement showing the date the advertisement was published and copies of all four (4) advertisements. The four (4) advertisements shall not be clipped from the paper, but shall remain intact so that the date line of the paper is shown. Proof of advertisement may also be in the form of a publisher's affidavit with one copy of the advertisement attached.

(c) The form of the notice shall be substantially as follows:

Notice of Application for Tax Deed

NOTICE IS HEREBY GIVEN That

The holder of the following certificates has filed said certificates for a tax deed to be issued thereon. The certificate numbers and years of issuance, the description of the

property, and the names in which it was assessed are as follows:

___ Certificate No./Year of Issuance/Description of Property/Name in which assessed

All of said property being in the County of ___, State of Florida.

Unless such certificate or certificates shall be redeemed according to law the property described in such certificate or certificates will be sold to the highest bidder at the courthouse door on the ___ day of ___ at ___ A.M.

Dated this ___ day of 19-.

Clerk of the Circuit Court of ___ County, Florida Ad No.___

The notice shall be single column and the size of the print shall be the same as any other legal advertisement. The clerk of the court shall not consolidate legal advertisements of tax deed applications with different legal descriptions. A tax deed shall have only one (1) legal description included on the deed. Consolidation sales are prohibited. The clerk shall sell the land in each tax deed application separately.

(2) Delivering and Posting.

(a) At least 30 days prior to the date of sale, the clerk shall prepare a notice containing the warning required by Section 197.522(2), F.S., and:

1. If the owner of the property to be sold resides in the same county in which the property is located, deliver

an original and sufficient copies of the notice to the sheriff of that county and

2. If the owner resides in Florida outside the county where the land is located, deliver an original and sufficient copies of the notice to the sheriff of the county in which the property is located, unless the property is assessed as non-agricultural acreage or vacant land.

3. If the owner resides outside the State of Florida, the clerk shall send notice to the sheriff of the county where the property is located, unless the property is assessed as non-agricultural acreage or vacant land.

(b) At least 20 days prior to the date of sale, the sheriff of the county where the owner resides shall serve the notice received from the clerk in the manner specified in Chapter 48, and the sheriff of the county where the property is located shall post the notice in a conspicuous place on the property.

(3) Mailing. At least 20 days prior to the date of sell, the clerk shall mail notices, by certified mail, to all persons listed in the tax collector's certification. Such notices shall contain the warning required by Section 197.522(1)(b), F.S. When such warning, combined with a copy of the advertised notice, is sent, it shall be deemed sufficient notice.

(4) The clerk shall prepare a certificate containing the names and addresses of those persons notified by mail and the date of mailing. The certificate shall be attached to the affidavit of publisher (proof of publication).

(5) The clerk of the circuit court shall record his certificate of notice together with the affidavit of publisher (proof of publication) in the official records of the county. For the recording of the certificate of notice and affidavit of publisher the clerk shall receive such fees for recordation as specified in Chapter 28, Florida Statutes.

TAX SALE CERTIFICATE NO. – 16112

This Certificate will be void seven years from date of issue.

STATE OF FLORIDA OFFICE OF TAX COLLECTOR

I, ALLEN C. CLARK, Tax Collector for the County of Palm Beach, in the State of Florida, do hereby certify that I did, at public auction, pursuant to notice given by law as required, on this the 1st day of June, 1989, issue to

~~COUNTY OF PALM BEACH~~
1982 TRUST FOR JESSICA LYNN ISRAEL

a tax sale certificate covering the parcel(s) hereinafter described for the sum of 277 DOLLARS and 54 CENTS [250.00 was struck out], said sum being the amount due for taxes, interest, costs and charges of the described parcel(s) for the year 1984, that the above named purchaser of this certificate or assigns will therefore be entitled to apply for a Tax Deed of such parcel(s) in accordance with the law unless the same shall be redeemed within such periods of time as are provided by law, by payment of such amount and interest thereon from the date of this certificate at the rate of eighteen percent per annum, if purchased by the county or eighteen percent per annum (or at such lower rate of interest as may be bid by any purchaser other than the county).

Said parcel(s) are described as follows:

PARCEL NUMBER	TYPE	VALUE	TAXABLE
00 42 45 10 01 004 0010			10,000

VALUE	CODE	ACRES
	20	

	DESCRIPTION
(illegible)	PALM BEACH RANCHES (UNREC) LT 1 BLK 4
	UNPAID UNDER SUIT 85-328 CA (L) D CASE DISMISSED

in the County of PALM BEACH, State of Florida.

The interest rate bid at the sale pursuant to Chapter 197, Florida Statutes, was 18.00 percent.

WITNESS my hand at WEST PALM BEACH, Florida, this 1st day of June, 1989.

Signature: /s/ Tax Collector

PALM BEACH COUNTY SHERIFF'S
ORIGINAL RETURN

SERVE	Court	Palm Beach
TO ROGER QUISENBERRY	Case #	Circuit Court
	16112	
	001	
ADDR	TYPE OF WRIT	
325 CONNISTON RD.	CERTIFIED COPY NOTICE	
WEST PALM BEACH, FL	OF APPLICATION FOR TAX DEED WITH WARNING & COPY	

ATTORNEY
CLERK OF CIRCUIT COURT, ROOM 201

PLAINTIFF:	COST
RE: ROGER F. QUISENBERRY	SERVICE $ 12.00
DEFENDANT:	CHECK 6626
N/A	PD

Received this writ on the 11 Day of DECEMBER A.D. 1991 and served the same on the within named ___ Corporation X Party ___ Garnishee X Defendant ___ Witness at 9 41 (AM Circled) PM on the 18 day of December A.D., 1991 in Palm Beach County, Florida.

[X] INDIVIDUAL

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading.

[ ] SUBSTITUTE

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of the Pleading, by leaving the copies at (his/her) usual place of abode with any person residing

therein above the age of 15 years, to wit:

(Name and Relationship) and informing the person of the contents thereof (as defined in F.S. 48.031 (1).)

[ ] CORPORATE

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me and copy of the Pleading.

to ——— as ——— of said corporation; in absence of the President, Vice President, Cashier, Secretary, General Manager, Director, Resident Agent or any officers. (as defined in F.S. 48.081)

[ ] WITNESS

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me.

[ ] SUBSTITUTE WITNESS

By delivering a true copy of this writ with the date and hour of service endorsed thereon by me at (his/her) usual place of abode, with any person residing therein above age of 15 years, to wit:

(Name and relationship) (as defined in F.S. 48.031(2).)

and informing the person of the contents thereof.

[ ] POSTING

By posting on the premises located at ——— a true copy of this writ with the date and hour of service endorsed thereon by me and a copy of Pleadings attached as the above named defendant was not available for personal service.

[X] MISCELLANEOUS SUBJECT TO SERVE DOES NOT LIVE AT ADDRESS GIVEN. POST AS PER MAP INSTRUCTIONS (pdw circled) Serve at owners home address. 5421 So. Flagler Dr. W.P.B.

(illegible)

Served at residence 5421 So. Flagler Dr. W.P.B.

By /s/ J. Boccanfuso
Deputy Sheriff

ID.# 1860 RICHARD P. WILLE, SHERIFF
OF PALM BEACH COUNTY, FLO

Note: Only that service indicated by the X is applicable to this return – all other portions should not be considered.

ORIGINAL COPY

Supreme Court, U.S.
FILED

94 495 SEP 13 1994

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1994

ROGER F. QUISENBERRY,

Petitioner,

v.

JACK M. BERK, Trustee, and MILTON T. BAUER, CLERK OF THE CIRCUIT COURT OF PALM BEACH COUNTY, FLORIDA,

Respondents.

On Petition For Writ Of Certiorari To The Fourth District Court Of Appeal Of Florida

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

JAMES K. GREEN, ESQ.
JAMES K. GREEN, P.A.
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Attorney for Petitioner

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OR CALL COLLECT (402) 342-2831

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1994

ROGER F. QUISENBERRY,

Appellant,

v.

JACK M. BERK, Trustee, and MILTON T. BAUER, CLERK OF THE CIRCUIT COURT OF PALM BEACH COUNTY,

Appellees.

CASE NO. 93-1640.

L.T. CASE NO. CL 92-1674 AN.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Decision filed June 15, 1994

Appeal from the Circuit Court for Palm Beach County; Edward H. Fine, Judge.

Richard H. Levenstein of Heimberg, Heimberg, Rader & Levenstein, Boca Raton, for appellant.

William W. Bell, West Palm Beach, for Appellee-Jack M. Berk.

PER CURIAM.

AFFIRMED.

DELL, C.J., HERSEY, J. and DAUKSCH, JAMES C., JR., Associate Judge, concur.

Supreme Court, U.S.
FILED
OCT 17 1994
OFFICE OF THE CLERK

No. 94-495

In The

Supreme Court of the United States

October Term, 1994

ROGER F. QUISENBERRY,

Petitioner,

v.

JACK M. BERK, Trustee and
MILTON T. BAUER, CLERK OF THE
CIRCUIT COURT OF PALM
BEACH COUNTY, FLORIDA,

Respondents.

On Petition For Writ Of
Certiorari To The Florida Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

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BRIEF IN OPPOSITION REFERENCES

Throughout Respondent's Brief in Opposition, Petitioner, ROGER F. QUISENBERRY, shall be referred to as either "QUISENBERRY" or "PETITIONER" and references to Respondent, JACK M. BERK, TRUSTEE, shall be referred to as either "BERK" or "RESPONDENT". References to Respondent, MILTON T. BAUER, CLERK OF THE CIRCUIT COURT OF PALM BEACH COUNTY, FLORIDA, shall be referred to as "CLERK". References to Petitioner's Appendix shall be referred to as "PET. APP.-___".

STATEMENT OF THE CASE

The Statement of the Case provided by QUISENBERRY in his Petition for Writ of Certiorari contains inaccurate statements of fact. Specifically, QUISENBERRY states that the subject property was sold for failure to pay $277.54 in taxes for the calendar year 1984. Although the Tax Certificate (PET.APP.-16) reflects said amount was due and owing. The Notice of Application for Tax Deed upon which the subject property was sold reflects that real estate taxes for the years 1988 and 1989 in the amount of $4,098.37 remained unpaid. Further, the Notice of Application for Tax Deed stated that same was subject to 1991 taxes. APP.-2.

Contrary to QUISENBERRY's assertions, the Clerk did not attempt to send notice of the tax sale by certified mail, but did send notice of the tax sale by certified mail. QUISENBERRY neglects to inform this Court that the certified mail return receipt was marked "unclaimed". PET. APP.-7.

Further, the Affidavit of the Clerk reflects that notice of the tax sale was also sent to QUISENBERRY at this Conniston Road address. APP.-3. Therefore, although there is nothing in the record to reflect that QUISENBERRY received the notice by certified mail, same was sent by the Clerk at two (2) different addresses.

Finally, QUISENBERRY incorrectly states that the Clerk attempted personal service on QUISENBERRY. First, this is incorrect because the Sheriff of Palm Beach County is responsible for personal service and, more importantly, the Palm Beach County Sheriff's original return of service unambiguously reflects that

QUISENBERRY was personally served with the Notice of Application for Tax Deed with warning and copy. PET. APP.-18. Thus, QUISENBERRY's argument that his due process has been violated is flawed in that his Statement of Case contains blatantly inaccurate facts.

An additional fact worth noting is the amount paid by BERK for the Tax Deed. BERK was the successful bidder at the subject tax sale for the bid amount of $30,000.00. This fact is relevant whereas QUISENBERRY has argued that property has been taken without compensation. This argument is without merit because the subject property goes to auction and the highest bidder receives the tax deed. Therefore, QUISENBERRY cannot argue that the property is taken without compensation because the Clerk's records reflect that after payment of all applicable taxes and a Solid Waste Authority lien, a balance as of September 13, 1993 of $24,330.71 remained in the Clerk's Registry to be disbursed to QUISENBERRY upon Court Order. APP.-4.

SUMMARY OF THE ARGUMENT

QUISENBERRY's due process rights were not violated. First, all property owners are charged with the knowledge that real estate taxes are due and payable annually. Second, the Property Appraiser's Office sends a proposed property tax bill, a final property tax bill and delinquent notices when property taxes have not been paid in any calendar year. QUISENBERRY makes no argument that these notices were not sent or received. Third, when a Tax Certificate is sold for the non-payment

of taxes, the property owner is notified of the Tax Certificate Sale and no Application for Tax Deed can be made for a period of two (2) years. Therefore, QUISENBERRY had two (2) years beginning June 1, 1989 to pay his taxes. QUISENBERRY did not pay taxes on the subject property in 1984, 1988, 1989 or 1991. Therefore, he cannot argue he was unaware that taxes were due on the subject property. Finally, QUISENBERRY argues that actual notice must be received to afford property owners due process. This argument must fail for there to be finality in the ad valorem taxation process. Specifically, if any State adopted an "actual notice" policy, no tax deed would be valid. After the auction and issuance of a Tax Deed, any property owner could sue the tax deed holder arguing that there was no "actual notice" and despite apparent evidence to the contrary. For example, if a Sheriff filed an affidavit of service reflecting that the legal property owner had been personally served with the Notice of Application for Tax Deed, this in and of itself would be insufficient to constitute actual notice if this Court were to adopt QUISENBERRY's argument.

Any property owner seeking to void a tax deed would simply state that he/she was not personally served despite the Sheriff's affidavit to the contrary and could argue that the signature on the certified mail return receipt form, which was received by the Clerk's office was a forgery. This is exactly what QUISENBERRY is arguing in the case at bar. The Sheriff's affidavit (PET.APP.-18) specifically states that QUISENBERRY was personally served. However, QUISENBERRY contested the Sheriff's assertion arguing that it was not him who was served with the Notice of Application for Tax Deed.

For these obvious reasons, "actual notice" cannot be assured. Further, requiring "actual notice" would severely prejudice the State's interest in generating revenue where property owners are deceased, out of the country, or have otherwise elected to abandon their property.

The procedures in place for attempting to notify a property owner of an Application for Tax Deed meet the due process requirements of the United States Constitution as interpreted by this Court and the Petition for Writ of Certiorari should be denied.

REASONS FOR DENYING THE PETITION

I. THE PALM BEACH COUNTY CLERK'S OFFICE SENT NOTICE OF THE TAX SALE TO MR. QUISENBERRY'S RESIDENCE.

Contrary to QUISENBERRY's assertion, certified mail, return receipt requested notice was sent to QUISENBERRY at his residence address and at another address which the Clerk had on record. The return receipt came back to the Clerk "unclaimed". PET.APP.-5. However, this does not mean that QUISENBERRY did not receive notice, but rather that he simply failed to claim same.

Further, although QUISENBERRY argued below that he was out of town on the date the Palm Beach County Sheriff's Department allegedly personally served him, he never argued that he was out of town on the first two (2) dates in which the Post Office attempted to deliver the

certified mail notice. Accordingly, QUISENBERRY's failure to claim the certified mail notice or otherwise act to confirm the property tax status resulted in him losing the subject property. This Court has consistently held that notice by mail is an effective means of affording due process. In *Greene v. Lindsey*, 456 U.S. 444 (1982), where this Court declared that posting a forcible entry and detainer action did not satisfy the standards of due process, Justice Brennan stated,

> As noted by the Court of Appeals, and as we noted in *Mullane*, the mail provides an efficient and inexpensive means of communications. *Id.* at 319, 70 S.Ct. at 659, upon which prudent men will ordinarily rely in the conduct of important affairs, *Id.* at 319-320, 70 S.Ct. at 659. Notice by mail under the circumstances of this case would surely go a long way toward providing the constitutionally required assurance that the State has not allowed its power to be invoked against a person who has had no opportunity to present a defense despite a continuing interest in the resolution of a controversy. Particularly where the subject matter of the action also happens to be the mailing address of the Defendant, and where personal service is ineffectual, notice by mail may reasonably be relied upon to provide interested persons with actual notice of judicial proceedings.

Although this Court did not discuss what happens when the mailed notice is allegedly unclaimed or not received, this Court has consistently held that notice by mail satisfies constitutional due process. Also, see *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983).

The constitutionality of § 197.522, Florida Statutes (1987), was recently upheld by the Florida Supreme Court in *Saada v. Dawson*, 608 So.2d 808 (Fla. 1992), where in Footnote 1, the Florida Supreme Court stated,

> The record does not indicate whether the owners actually received notice because the notice was not mailed to their present residence. However, Section 197.522(1)(d), Florida Statutes (1987), specifically provides that "failure of anyone to receive notice as provided herein shall not affect the validity of the tax deed issued pursuant to the notice." Thus, the relevant issue is whether the Clerk complied with the notice provisions, not whether the owner actually received notice.

In upholding the validity of the Tax Deed, the Florida Supreme Court held,

> A land owner whose property is to be sold for delinquent taxes undoubtedly has a vested ownership interest in the subject property and is therefore entitled to notice of a pending tax deed sale . . . However, we do not agree with *Saada's* contention that due process requires strict compliance with the notice provisions in both subsections of Section 197.522. In any proceeding which is to be accorded finality, due process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) . . .
>
> Florida's statutory scheme governing the sale of real property for the collection of delinquent

> taxes and the validity of tax deeds issued pursuant to such sales is comprehensive. The notice provisions contained in Chapter 197 are an integral part of that scheme. *Section 197.522(1) meets constitutional due process requirements by mandating notice reasonably calculated to apprise land owners of the pending deprivation of their property . . .* (emphasis added).

That whereas the Clerk's office sent notice of the pending tax sale to QUISENBERRY at two (2) addresses, his due process rights were not violated and the Petition for Writ of Certiorari should be denied.

II. THE PALM BEACH COUNTY SHERIFF'S DEPARTMENT PERSONALLY SERVED MR. QUISENBERRY WITH THE NOTICE OF TAX SALE.

The Palm Beach County Sheriff's original return reflects that QUISENBERRY was personally served on December 18, 1991 with a certified copy of the Notice of Application for Tax Deed with warning and copy. PET.APP.-18-20. This fact alone renders QUISENBERRY's Petition for Writ of Certiorari moot. QUISENBERRY argued below that he was out of town on the alleged service date and therefore, was not the person who the Sheriff believed to be serving. However, this argument is exactly why "actual notice" cannot be a prerequisite to uphold the validity of tax deeds. Every property owner, whether receiving notice or not, could argue that notice was not received and be entitled to void the subject tax deed. Of course, there would be a trial to determine whether or not the notice was received, however, such a requirement would completely thwart Florida's ability to

collect taxes. In *Saada, supra,* the Florida Supreme Court stated,

> As Judge Wiggington noted, under early common law every presumption was against the validity of a tax sale, and one claiming title under such a sale had to prove strict compliance with the appropriate statutory provisions. However, under this common-law approach, tax titles were very difficult to establish, and the State was consequently hampered in its ability to collect taxes . . . In response to this dilemma, legislatures passed statutes relaxing the strict common law requirements regarding proof of validity of tax sales. Courts have responded in kind by regarding many provisions as directory only . . .

The concerns and issues raised by QUISENBERRY in his Petition for Writ of Certiorari have existed since the establishment of Florida law regarding the collection of taxes. The Florida legislature and Florida Courts have paid close attention to this Court's holding in *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950). QUISENBERRY and BERK agree that the principals enunciated in *Mullane, supra,* relating to the requirements of due process are well founded. However, the Florida legislature and the Florida Supreme Court have concluded that Section 197.522, Florida Statutes (1987) provides notice "reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection." *Id.* at 314. Therefore, and assuming that the Florida Supreme Court had not determined that personal service by the Sheriff was directory only (see *Saada,*

supra), the record reflects that QUISENBERRY was personally served rendering his Petition for Writ of Certiorari moot.

Even if the Sheriff served a house guest who was staying at QUISENBERRY's home doing handy work rather than QUISENBERRY, this attempt to provide notice should be preferred. The house guest filed an Affidavit (APP.-5,6) which states in pertinent part,

> I was inside the house, cleaning, when the doorbell rang. I went to the door, opened it slightly, and a man at the door said "I've got some papers here for you", or something to that effect. I took the papers, didn't read them, and put them on the desk. The man never identified himself as a Sheriff and never asked me who I was, nor for identification, or whether or not I was Roger Quisenberry.

Irrespective that the Florida Supreme Court had determined in *Saada, supra,* that personal service by the Sheriff was directory only, the Trial Court concluded that serving the house guest (whether said service was in accordance with Florida law or not) was a better means of insuring notice than posting. QUISENBERRY would argue that the Sheriff should have knocked on the door, advised who he was, asked whether the individual was Mr. Quisenberry and, if not, ask the individual to close the door so the Sheriff could post same on the house. This argument is simply without logic. Further, this Court in *Greene, supra,* determined that posting writs of forcible entry and detainer does not satisfy the minimum standards of due

process because said notices were often removed by children or other tenants in the building. In so holding, this Court stated,

> Of course, the reasonableness of the notice provided must be tested with reference to the existence of "feasible and customary" alternatives and supplements to the form of notice chosen . . .

In the case at bar, handing the notice to a house guest who placed same "on [Quisenberry's] desk" is certainly a preferred method of notice rather than posting.

III. FLORIDA LAW PERTAINING TO THE ISSUANCE OF TAX DEEDS DOES NOT VIOLATE DUE PROCESS.

PETITIONER cites *Mullane, supra,* to support his due process argument. However, reading *Mullane, supra,* together with Section 197.522, Florida Statutes (1987) reflects that said Statute meets the constitutional due process requirements whereas Florida has attempted to insure notice and opportunity to be heard by requiring the Clerk to send certified mail, return receipt requested, notice of a pending tax sale to the persons listed in the tax collector's statement, to publish notice of a pending tax sale and provide the Sheriff of the County in which the legal title holder resides notice of the tax sale to serve upon the property owner. The statutory schemework created by the State of Florida to provide notice of pending tax sales meet the fundamental requirements of due process as stated by this Court in *Mullane, supra,* and its progeny.

In addition, the facts of this case show that Section 197.522, Florida Statutes (1987) as applied to QUISENBERRY do not violate his due process rights and although it is unfortunate his property was lost, the State of Florida provided more than "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their exceptions." *Id.* at 657.

The loss of QUISENBERRY's property is a direct result of his failure to pay taxes and properly protect his interests. In *Mullane, supra,* this Court quoted Justice Marshall in stating,

> It is the part of common prudence of all those who have any interest in [a thing], to guard that interest by persons who are in a situation to protect it.

Id. at 658. It was QUISENBERRY's lack of due diligence, not the State of Florida's violation of due process, which caused the loss of QUISENBERRY's property. Accordingly, Section 197.522, Florida Statutes (1987) as applied to QUISENBERRY is constitutional and this Court should deny PETITIONER's request for the issuance of a Writ of Certiorari.

QUISENBERRY also cites *Fuentes v. Shevin,* 407 U.S. 67 (1972) in support of his due process argument. However, the facts of *Fuentes, supra,* are completely inapplicable to the case at bar. In *Fuentes, supra,* this Court determined that Florida's Replevin Statute was unconstitutional and held,

> We hold that the Florida and Pennsylvania prejudgment replevin provisions work a deprivation of property without due process of law insofar as they deny the right to a prior opportunity to be heard before chattels are taken from their possession. Our holding, however, is a narrow one . . . Since the essential reason for the requirement of a prior hearing is to prevent unfair and mistaken deprivation of property, however, it is axiomatic that the hearing must provide a real test. "[D]ue process is afforded only by the kinds of 'notice' and 'hearing' that are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property . . . "

In the present case, Florida provides many mechanisms of notice which are designed to inform its citizens that their property may be lost if they fail to pay real estate taxes. These notices include, but are not limited to, certified mail notice, publication notice, regular mail notice in the form of property tax bills and delinquent notices and personal service, if the owner resides in the County where the subject property is located. Thus, the holding in *Fuentes, supra,* is simply inapplicable.

Contrary to QUISENBERRY's assertions as set forth on Page 7 of his Petition for Writ of Certiorari, the test this Court formulated in *Matthews v. Eldridge,* 424 So.2d U.S. 319 (1976), when applied to the case at bar, reflects that Florida law complies with constitutional due process. Although the interest of a land owner in keeping his property is great, the risk of a wrongful deprivation of said interest is slight and Florida has many procedural

safeguards to ensure an owner is notified that his property may be lost for failure to pay taxes. Finally, the State's interest in obtaining revenue is substantial, and for the tax deed process to have finality, "actual notice" is impossible. QUISENBERRY simply failed to protect his interest, and is charged with the knowledge that real estate taxes are payable annually.

QUISENBERRY argues on Page 9 of his Petition that additional forms of notice should be required to ensure property owners are aware of pending tax sales. However, this argument is unpersuasive whereas Florida law provides many forms of notice which meet the due process requirements of the Constitution as interpreted by this Court.

CONCLUSION

For the reasons set forth herein, the Petition for Writ of Certiorari should be denied and RESPONDENT requests that costs be taxed against PETITIONER.

Respectfully submitted,

DANIEL M. LANDIS, ESQ.
TEDESCO & LANDIS, P.A.
Compson Financial Center,
Suite 302
980 North Federal Highway
Boca Raton, Florida 33432
(407) 391-5506
Florida Bar No. 798266

NOTICE OF APPLICATION FOR TAX DEED

NOTICE IS HEREBY GIVEN, that 1982 TRUST FOR JESSICA LYNN ISRAEL the holder of the following certificate has filed said certificate for a tax deed to be issued thereon. The certificate number and year of issuance, the description of the property, and the names in which it was assessed are as follows:

Certificate No. 16112 Year of Issuance JUNE 1, 1989

Description of Property PALM BEACH RANCHES (UNREC)

LT 1 BLK 4

00-42-45-10-01-004-0010

Name in which assessed ROGER F QUISENBERRY

Said property being in the County of PALM BEACH, State of Florida.

Unless such certificate shall be redeemed according to law the property described in such certificate shall be sold to the highest bidder at the courthouse door on the 15th day of JANUARY, 1992.

IN COURTHOUSE LOBBY, 2ND STREET ENTRANCE AT 11:00 A.M.

Dated this 10th date of DECEMBER, 1991.

SUBJECT TO 1991 TAXES

Signature: /s/ John B. Dunkle (SEAL)

Clerk of Circuit Court of PALM BEACH County, Florida

PUBLISH: DEC. 10,17,24,31, 1991

DELINQUENT REAL ESTATE TAXES
DUE FOR THE YEARS: 1988,1989

TOTAL AMOUNT TO BE REDEEMED: $ 4,098.37

OR8 7089 Pg 60

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, JOHN B. DUNKLE, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, State of Florida, do hereby certify that I, the Clerk, did on the 10th day of December, 1991 mail a copy of notice addressed to:

ROGER F QUISENBERRY, 325 CONNISTON ROAD, WEST PALM BEACH, FLORIDA
THOMAS A & AGNES H EVELYN, 6032 WESTERN WAY, LANTANA, FL
SOLID WASTE AUTHORITY, P.O. BOX 24693, WEST PALM BEACH, FLORIDA 33416
FLORIDA HASCO INC, % KENT HUFFMAN ESQ. 251 ROYAL, PALM WAY # 211, PALM BEACH, FL 33480
THOMAS FRANK MAGESTRO, 139 N 12TH AVENUE, LANTANA, FL
W W & WILMA THOMSON, % MR L D NOBLE, P.O. BOX 352, HUDSON, OH
ROGER F QUISENBERRY, 5421 S FLAGLER DRIVE, WEST PALM BEACH, FL 33405
LAKE WORTH DRAINAGE DIST. 13081 MILITARY TRAIL, DELRAY BEACH, FL 33445
TRUST JESSICA LYNN ISRAEL, P.O. BOX 403006, MIAMI BEACH, FL 33140
EVERGLADES FEDERAL S & L, 125 N MAIN STREET, BELLE GLADE, FL 33430

JOHN B. DUNKLE

CLERK OF THE CIRCUIT COURT

BY: /s/ Tamara T. Stambaugh
Deputy Clerk (SEAL)

Clerk Circuit Court
Palm Beach County, Florida

Tax Deed Sales ■ Box 484 ■ West Palm Beach, Florida 33402-0484 ■ (407) 355-2962

REPLY TO: TAMARA T. STAMBAUGH

CERTIFICATE NUMBER 16112 '89

TAX DEED SALE: JANUARY 15, 1992

AS OF SEPTEMBER 13, 1993, THE FOLLOWING CONTAINS ALL DISBURSEMENTS AND BALANCES OF THE OVERBID CONCERNING THE ABOVE REFERENCED CERTIFICATE.

BEGINNING BALANCE:	JANUARY 15, 1992	30,000.00
CK 6790 TO JESSICA ISRAEL	JANUARY 21, 1992	4,098.37
SOLID WASTE AUTHORITY	SEPTEMBER 13, 1993	1,570.92

REMAINING BALANCE TO ~~DATE~~: 24,330.71

DOROTHY H. WILKEN
CLERK OF THE CIRCUIT COURT
BY: /s/ Tamara T. Stambaugh
DEPUTY CLERK

EXHIBIT D

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared Joseph T. Osterby who, being by me first duly cautioned and sworn, upon his oath deposes and says:

1. My name is Joseph T. Osterby and I reside at 61 Arch Drive, Lake Worth, Florida 33467. I am over the age of 18 years and the following is based on my personal knowledge.

2. I have been an employee of Roger Quisenberry for the past twenty five years, off and on, doing general maintenance and repair work.

3. On December 18, 1991, I was working at Mr. Quisenberry's house while Mr. Quisenberry was out of town, staying there overnight. Before that date, the last time I stayed at his house for the same reasons was eight months before.

4. I was inside the house, cleaning, when the door bell rang. I went to the door, opened it slightly and a man at the door said "I got some papers here for you", or something to that effect. I took the papers, didn't read them, and put them on the desk. The man never identified himself as a sheriff and never asked me who I was, nor for identification, or whether or not I was Roger Quisenberry.

5. On or about January 15, 1992, Brenda Brown, a tenant of Mr. Quisenberry's at the 6032 Western Way